

REPLY UNDER 37 C.F.R. §1.116
EXPEDITED PROCEDURE
ART UNIT 3738
Atty Docket No.: 31132.43 / PC810.00
Customer No: 46333

REMARKS

Claims 1-17 and 22-27 are pending in the application. Of these, claims 1, 8, 13, 14, 22, 23, 24, and 27 are independent. Applicants request that this paper be entered and that claims 1, 4, 6, 8, 13, 14, and 23 be amended. Reconsideration of the pending claims in light of the above amendments and the following remarks is respectfully requested.

Allowed and Allowable Claims

Applicants acknowledge the indication that claims 24-27 are allowed and that dependent claims 8 and 13-17 are allowable. Applicants have rewritten claims 8, 13, and 14 into independent form to include the subject matter of prior claim 1.

The Office Action indicates that claims 22 and 23 are both allowed (Office Action page 4 and Office Action Summary) and rejected under 35 U.S.C. §102 (Office Action page 3). In a telephone conversation with the Examiner on February 16, 2007, the Examiner stated that after receipt and consideration of our filed response, he will issue a new Office Action clarifying the status of claims 22 and 23.

Finality of Office Action

In the telephone conversation with the Examiner on February 16, 2007, the Examiner stated that Applicants should respond to the rejections of the other claims for now, and that after receipt and consideration of our filed response, he will issue a new Office Action clarifying the status of claims 22 and 23. Accordingly, Applicants look forward to receiving a subsequent Office Action clarifying the status of these claims.

Compliance with §112

The Office Action states that claims 2-7 and 9 are indefinite, but in a telephone conversation with the Examiner on February 16, 2007, the Examiner stated that only claims 4-7 and 9 should have been rejected under §112. Accordingly, this response addresses the rejection only with respect to claims 4-7 and 9.

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The Office Action states that the rejected claims include “language similar as written in the new structure limitations entered into independent claim 1.” Office Action, page 2.

Applicants request that claims 4 and 6 be amended as shown above in the Listing of Claims to remove language that may be considered similar to that of claim 1. Claims 5, 7, and 9 each depend from one of claim 4 and claim 6 and also include limitations different than those in independent claim 1 and intervening claims 4 and 6. Accordingly, Applicants respectfully request that the Examiner enter this paper to amend claims 4 and 6 and withdraw the rejection.

Compliance with §102

Independent claim 1

The Office Action indicates that claims 1-7, 11, 22, and 23 are rejected under 35 U.S.C. §102 as being anticipated by U.S. Patent No. 5,556,431 to Buttner-Janz. Claims 22 and 23 are discussed above. With respect to claim 1, Applicants traverse the rejection because Buttner-Janz does not disclose all the recited elements of claim 1. For example, claim 1 is directed to a prosthetic device for lateral insertion into an intervertebral space, and recites, among other features:

a first component having a first laterally-extending flange configured to advance into a laterally extending preformed opening in a first vertebra from a lateral approach, the first flange extending from a first bearing surface offset from a first center point of the first bearing surface, the first component having a first articular surface opposite the first bearing surface

Buttner-Janz does not anticipate claim 1 at least because Buttner-Janz does not disclose a “laterally-extending flange configured to advance into a laterally extending preformed opening in a first vertebra from a lateral approach.” The teeth (7) in Buttner-Janz are formed in two rows that appear to arc in opposite directions. Thus, the distance between the two rows varies along the length of the rows. Buttner-Janz, Figs. 1 and 2. Accordingly, these teeth are not “configured to advance into a laterally extending preformed opening in a first vertebra from a lateral approach,” because the varying distance between the rows would cause the teeth to physically

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interfere with the vertebra, thereby limiting the ability of the rows of teeth to advance into laterally extending preformed openings. Accordingly, claim 1 is not anticipated by Buttner-Janz. Applicants respectfully request that the Examiner reconsider and withdraw the rejection.

Dependent Claims

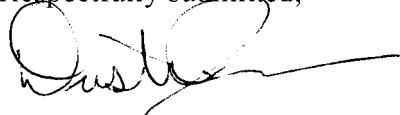
Claims 2-7 and 11 depend from claim 1 and also are believed to be distinct from the art of record, for example for the same reasons discussed above with respect to claim 1. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the rejection.

Conclusion

For at least the reasons set forth above, Applicants submit that all the pending claims are in a condition for allowance. Accordingly, Applicants respectfully request that the Examiner reconsider and issue a formal notice of allowance.

Please grant any extension of time required to enter this response and charge any additional fees required by this paper to our Deposit Account No. 08-1394.

Respectfully submitted,

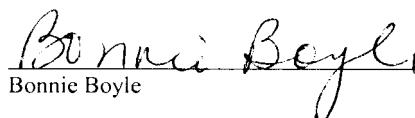


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I hereby certify that this correspondence is being filed with the U.S. Patent and Trademark Office via EFS-Web on February 20, 2007.


Bonnie Boyle